

June 2003

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 5

Petitions and Preliminary Hearings

5.11 Procedures at Preliminary Hearings

Replace the second paragraph on page 99 with the following language:

Presence of parent, guardian, or legal custodian. “The court shall determine whether the parent, guardian, or legal custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or legal custodian present, provided a guardian ad litem or attorney appears with the juvenile.” MCR 3.935(B)(1).

CHAPTER 5

Petitions and Preliminary Hearings

5.15 Required Procedures for Placement of Indian Children in Status Offense and “Wayward Minor” Cases

Replace the first three paragraphs under Section 5.15 with the following language:

Effective May 1, 2003, MCR 3.980(C) was amended. See Michigan Supreme Court Orders 1998-50, 2001-19. MCR 3.980(C) now provides:

“(1) After Emergency Removal. If an Indian child is removed under subrule (B)(1) or (2), a removal hearing must be completed within 28 days of removal from the parent or Indian custodian.

“(2) Non-Emergency Removal. Except in cases of emergency removal under subrules (B)(1) or (2), a removal hearing must be completed before an Indian child may be removed from the parent or Indian custodian.”

MCR 3.980(C)(4) states that “[a] removal hearing may be combined with any other hearing.” A removal hearing may be “combined with” a preliminary hearing.

Replace the paragraph on page 107 that begins “**Evidentiary requirements**” with the following language:

Evidentiary requirements. Except for cases of emergency removal, an Indian child must not be removed from the home, or remain removed from the home pending further proceedings, unless there is clear and convincing evidence, including the testimony of at least one expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. MCR 3.980(C)(3) and 25 USC 1912(e).

Insert the following language after the first full paragraph on page 108:

MCR 3.980(C)(3) provides an “expert witness” must have knowledge about the child-rearing practices of the Indian child’s tribe.

CHAPTER 22

Case Review & Probation Revocation in Designated Case & “Automatic Waiver” Proceedings

22.5 Mandatory Probation Revocation for Commission of a Felony

Replace only the first paragraph in the quote of MCR 6.933(C) at the top of page 463 with the following language:

“(1) Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams (1,000 grams beginning March 1, 2003) or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years, following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.”

